IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1513 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAJIR HUSAIN ALIAS DENI GULAMHUSAIN MALEK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1513 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS ARCHANA RAVAL, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order passed against him by the detaining authority, by its order dated 31.12.2003 under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order, the petitioner was also served with

the grounds of detention.

2. In the grounds of detention, there is a reference about one criminal case, which is pending against the petitioner. The aforesaid case is registered against the petitioner under the Bombay Prohibition Act. It is alleged that, the petitioner is dealing in foreign liquor. After recording subjective satisfaction, the detaining authority has detained him under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. Learned advocate for the petitioner submitted that, there is only one solitary case registered against the petitioner under the Bombay Prohibition Act. It is submitted that, from the aforesaid case, it cannot be said that the activity of the petitioner is such which is injurious to public health or that he has violated any public order by committing offence under the Bombay Prohibition Act. To substantiate her say, the learned advocate for the petitioner has relied upon the decision of this Court in the case of Sandip Omprakash Gupta v. State of Gujarat reported in 2004(1) GLR 864 in which this Court has held that, on the basis of solitary incident, resort to preventive detention cannot be made, as such solitary case can be considered as a violation of law and order on the part of detenu and not the public order.

4. Learned advocate for the petitioner further submitted that, there is a delay of about three months for passing the detention order from the solitary registered offence. It is submitted that, in view of this long delay of more than three months, the petitioner is required to be released on this ground also.

5. Learned advocate for the petitioner has relied on the decision of this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police reported in 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21:-

> "para.21 In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996,

both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppl. SCC 61."

6. So far as the aforesaid contentions are concerned, no affidavit-in-reply is filed by the authority at all controverting the said contention nor is any file produced before the Court. In such type of cases, normally, reply is required to be filed, controverting the averments made in the petition; otherwise, it would be presumed that the averments made in the petition are correct because they stand uncontroverted. In view of the said aspect also, the averments made in this behalf are required to be accepted. Since the averments are not controverted and also on the ground of unexplained delay in passing the detention order, this petition is required to be allowed.

7. In view of what is stated above, this petition is allowed. The order of detention dated 31.12.2003 is quashed and set aside. The detenu, Najir Husain @ Deni Gulam Husain Malek, is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

syed/